

**Vermont Department of Banking, Insurance, Securities
and Health Care Administration**

Insurance Division Bulletin #162

August 10, 2011

Regulation 79-2 and Total Loss Settlements

A. Use of Total Loss Vendors

Regulation 79-2 sets out guidelines for how an insurer will settle a total loss motor vehicle claim. The Insurance Division is aware that some insurers are using third-party vendors to assist them with the valuation of vehicles that are a total loss. The purpose of this Bulletin is to clarify the role of vendors, and the responsibilities of insurers using vendors, and to give insurers guidance on the requirements of Regulation 79-2 with regard to total loss settlements.

Regulation 79-2 provides that the process of settling a total loss constitutes adjusting for purposes of Vermont law, and that a licensed adjuster must investigate and negotiate settlement of a claim. The use of a vendor to gather information about the value of a total loss vehicle does not relieve an insurer, or an adjuster acting on behalf of an insurer, from the duties and obligations under the regulation. A vendor's valuation report or other information should not be considered or used by an insurer as a surrogate for the proper adjustment of a total loss. An adjuster must ensure that the information relied upon from a vendor is accurate and satisfies the requirements of the regulation, including verifying that vehicles presented as comparable or replacement vehicles are in fact comparable and available at the price indicated.

Many of the total loss valuation reports that have been reviewed by the Department do not satisfy the requirements of Regulation 79-2. In some instances insurers are relying on total loss valuation reports that are prepared by vendors using valuation methods that do not conform to the requirements of the regulation. Accordingly, below is a review of some of the key total loss provisions of Regulation 79-2. This review is given as guidance to insurers to ensure that their loss adjustment practices conform to the law.

B. Requirements of Regulation 79-2

The regulation sets forth three methods an insurer may use to settle a total loss. It is at the discretion of the insurer as to which method it uses for a particular loss.

1) Replacement

Section 8(B)1 of Regulation 79-2 provides, in part, that in the event of a total loss, an insurer may offer a replacement vehicle, which is a comparable motor vehicle. The Department considers “comparable vehicle” to mean a vehicle of the same make and model that is in the same or better condition and is no older than the totaled vehicle.

2) Cost of a Comparable Vehicle

Section 8(B)2 of Regulation 79-2 provides, in part, that an insurer may offer a cash settlement based upon the actual cost to cover the purchase of a comparable vehicle. The Department considers the term “actual cost” to mean the cost of an existing vehicle available for purchase by the claimant in the local market area at the time of the settlement offer. An insurer should be identifying a specific vehicle. Under this section of the regulation insurers should not be averaging multiple vehicles to derive a settlement value nor should insurers be adjusting the settlement offer by making adjustments to the “comparable vehicle” for mileage, condition or similar factors as part of its settlement.

3) Use of a Price Guide

Section 8(B)3 of Regulation 79-2 provides, in part, that an insurer may offer a cash settlement based upon “published automobile price guides.” In particular, the Department considers the term “published price guide” to mean a guide that is available to the public in electronic or printed form, and is either generally recognized for use by the public or has a sound basis for deriving prices.

Values derived from a published automobile price guide must be further adjusted to determine the value of a total loss. A price guide alone is not a sufficient basis for cash settlement under Regulation 79-2. Subsection 8(B)3(a) provides that a price guide value shall be adjusted to reflect the cost of a comparable motor vehicle in the local market area when one is available. The Department considers the term “local market area” to mean the town or city where a claimant lives and includes an area that is commonly accessed by people living in that town or city for purchasing automobiles. Further, the Department considers the term “available” to mean a vehicle that is available for purchase by the claimant at the time of the settlement proposal.

Finally, Subsection 8(B)3b of Regulation 79-2 allows for the use of direct quotes from qualified dealers only if a comparable motor vehicle is not available in the local market area. The Department considers the term “qualified dealer” to mean a dealer of the make of vehicle in question or a dealer that has experience valuing similar types of vehicles.

C. “Take price”, “Ask Price” and “Cost”

Some vendors collect data about what a dealer will “ask” for a vehicle, and/or, what a dealer will “take” for a vehicle. At issue is how these values relate to the total loss provisions of Regulation 79-2.

Regulation 79-2 does not use the terms “ask price” or “take price”, but rather uses the term “cost.” The regulation refers to the “cost” of a comparable vehicle in Section 8(B)2 and requires in Section 8(B)3 that a published price guide be adjusted for the cost of a comparable motor vehicle in the local market area, when one is available. Since dealers may sell vehicles for less than what they ask, but more than what they will take, the relevant inquiry is what, in fact, a vehicle sells for in the local market. This amount represents the cost of a comparable motor vehicle for purposes of Regulation 79-2.

D. Reconditioning

Regulation 79-2 provides that insurers shall not deduct for reconditioning costs unless such deductions are justified and detailed as a result of an actual inspection by a licensed adjuster or appraiser. To justify reconditioning costs the adjuster or appraiser must indicate in detail what part of the vehicle needs reconditioning and the actual cost associated with such reconditioning. Reconditioning costs that are based upon a general statement of vehicle condition do not satisfy the requirement of the regulation.

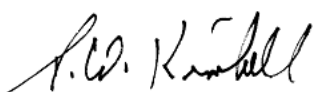
E. Documentation

An insurer and its adjuster must be able to document how a total loss adjustment was made. A vendor’s total loss report is not by itself sufficient. The adjuster must be able to identify and explain how a settlement offer was derived and detail all steps that were taken by the adjuster in conformity with the requirements of Regulation 79-2.

F. Summary

Insurers and adjusters are reminded that the use of a vendor to collect information does not relieve an adjuster or insurer from the responsibility to adjust claims and to ensure that the information it uses is accurate and satisfies the requirements of the regulation. The use of a vendor is not a substitute for the adjustment of a claim by a licensed claims adjuster in accordance with the requirement of Regulation 79-2 as explained in this Bulletin.

Dated at Montpelier, Vermont, this 10th day of August, 2011.



STEPHEN W. KIMBELL, Commissioner